



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1869-99

15 June 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 June 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 29 April 1969 at age 17. The Board found that during 1970 you received nonjudicial punishment and were convicted by a summary court-martial. Your offenses were two periods of unauthorized absence totaling about 17 days, two absences from your appointed place of duty and a uniform violation.

On 17 September 1970 you began a period of unauthorized absence which lasted until you were apprehended on 28 April 1971, a period of about 221 days. Subsequently, you were an unauthorized absentee from 4 May until you were apprehended on 11 May 1971. Your military record shows that on 24 May 1971 you requested discharge in order to avoid trial by court-martial for the two foregoing periods of unauthorized absence totaling about 228 days. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 14 June 1971 and, as a result of this action, you were spared the stigma of a court-

martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You were discharged on 18 June 1971.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and limited education. The Board also considered your contention that your discharge should be upgraded because of a Presidential amnesty. The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the offenses. The Board was aware that there was no amnesty program that would require recharacterization of your discharge or would establish eligibility for veterans benefits to individuals in your situation. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director